

*In the Matter of Joanne Cole,*  
*Department of Law and Public Safety*  
DOP Docket No. 2004-912  
**(Merit System Board, decided November 4, 2004)**

Joanne Cole, a former Executive Secretary with the Division of Consumer Affairs (Board of Nursing), Department of Law and Public Safety, appeals the attached determination of the Chief of Staff which found that there was probable cause to substantiate a finding that the appellant violated the New Jersey State Policy Prohibiting Discrimination, Harassment or Hostile Environments in the Workplace (State Policy). It is noted that the appellant resigned effective December 20, 2002.

In a letter dated July 7, 2003, the Chief of Staff advised the appellant that the Equal Employment Opportunity and Affirmative Action Unit (EEO/AA) of the Department of Law and Public Safety had conducted an investigation into allegations of violations of the State Policy filed by co-worker L.A. in which she asserted that the appellant had discriminated against her on the basis of her disability. Specifically, L.A. asserted that she was required to attend a meeting with her then Director, Patricia Polansky, and the appellant regarding L.A.'s job performance. During the meeting, L.A. asserted that the appellant stated that she could not confirm if L.A. had attended an Alcoholics Anonymous (AA) meeting. L.A. also asserted that the appellant had stated that L.A. was subject to a relapse at any time because she had not participated in a 90-day recovery program. Additionally, L.A. asserted that the appellant had provided information regarding recovery programs. The EEO/AA indicated that its investigation had substantiated that the appellant stated that she could not confirm that L.A. had attended an AA meeting and that she had provided information regarding recovery programs to the appellant. However, the EEO/AA noted that its investigation could not substantiate that the appellant had stated that L.A. was subject to a relapse because she had not participated in a 90-day program. Therefore, the EEO/AA determined that the appellant's statements that she could not confirm L.A.'s attendance and the fact that she provided information regarding recovery programs to L.A. violated the State Policy. As a result, the EEO/AA recommended that the appellant receive "individual counseling and training on the State Policy from the EEO/AA Unit."

On appeal to the Merit System Board (Board), the appellant asserts that she did not violate the State Policy. With regard to providing information regarding recovery programs, the appellant indicates that L.A. requested the information from her. Moreover, the appellant notes that the meeting was set-up by Robert Cornish, Special Investigator, Department of Law and Public Safety<sup>1</sup>, at the request of L.A. Further, the appellant claims that although she told Cornish she was not employed to counsel employees, he stated that it was just an informal meeting to assist a co-worker. The appellant further contends that after initially providing L.A. with the information, L.A.

---

<sup>1</sup> Department of Personnel (DOP) records indicate that Cornish was previously employed as an Equal Employment Opportunity Officer with the appointing authority.

would frequently stop by and tell her how she was doing and to thank the appellant for her support. The appellant notes that she did not tell her immediate supervisor, Polansky, about the meetings due to the confidentiality of the situation. With regard to the statement that she made during the meeting that she could not confirm attendance at an AA meeting, the appellant questions how that statement can violate the State Policy. Specifically, the appellant asserts that due to her understanding of the AA program, only L.A. would know if she attended the meetings or was in a recovery program.

In response, the EEO/AA asserts that the appellant failed to argue that the investigation was deficient, nor did she dispute its findings. Therefore, the EEO/AA asserts that the appellant's appeal should be dismissed. In the alternative, the EEO/AA reiterates its findings and maintains that it performed a thorough investigation. The EEO/AA asserts that in her initial complaint, L.A. indicated that Polansky advised her to discuss alcohol recovery programs with the appellant since the appellant directed the Nursing Board's intervention program for nursing professionals who are dealing with addictions. L.A. indicated that she spoke with the appellant on several occasions; however, the appellant did not counsel her on a regular basis. The EEO/AA maintains that during its investigation, it interviewed Polansky who, although confirming that the appellant had stated that she could not confirm that L.A. had attended any AA meetings, did not confirm that the appellant stated L.A. was subject to a relapse. The EEO/AA asserts that since the appellant's statement was related to L.A.'s disability, it violated the State Policy. The EEO/AA also notes that the appellant admitted that she had provided information to L.A. regarding treatment programs. Therefore, the EEO/AA asserts that although the appellant provided the information at the direction of Polansky and at the request of L.A., it was not her job to do so, and therefore, she violated of the State Policy.

## **CONCLUSION**

The Board has conducted a review of the record and finds that the EEO/AA's conclusion that the appellant violated the State Policy is not substantiated by the record. After the EEO/AA's investigation of L.A.'s allegations, it found that the appellant had violated the State Policy. Specifically, the EEO/AA determined that regardless of whether the appellant had been approached by L.A. and/or told by her supervisor to provide information regarding treatment programs, it was not the appellant's job to do so; and therefore, she violated the State Policy. However, the Board does not agree with the EEO/AA's determination regarding this issue. Although it is true that the intent of a speaker in making a statement which violates the State Policy is not a consideration when determining whether a statement violates the State Policy, it is an incongruous result to find a violation of the State Policy when, as in the instant matter, the complainant (L.A.) requested the information from the respondent. The EEO/AA also determined that the appellant's statement that she could not confirm L.A.'s attendance at an AA meeting also violated the State Policy. However, the Board notes that the AA program is *anonymous*; and as such, attendance information is not kept or given out. Accordingly, the appellant's statement, although referring to L.A.'s disability, does not appear to violate the State Policy. Moreover, the Board notes that the statements were apparently made in conjunction with legitimate concerns regarding L.A.'s job performance, where such

information, even though pertaining to L.A.'s disability, may have been pertinent. In addition, the mere fact that the appellant made statements regarding L.A.'s disability does not, based on the facts presented in the record, establish that such statements violated the State Policy. Accordingly, the Board finds that the allegations that the appellant violated the State Policy are not substantiated.

## **ORDER**

Therefore, it is ordered that this appeal be granted and the appellant's personnel record be corrected to reflect the Board's finding that the allegations that she violated the State Policy were not substantiated.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.